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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 29th March, 2023

No. 13/19948-HII(2)-2023/4355.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 30/2020 dated 27.01.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

UDAY PAL SINGH S/O LATE SHRI KUNWAR BAHADUR SINGH R/O HOUSE NO. 77,
INDERPURI, AMBALA CANTT. (HARYANA) (Workman)

AND

1. M/S GROZ-BECKERT ASIA PVT. LIMITED, 133-135, INDUSTRIAL AREA - I, CHANDIGARH - 160002 THROUGH ITS MANAGING DIRECTOR.
2. M/S GROZ-BECKERT ASIA PVT. LIMITED, 133-135, INDUSTRIAL AREA - I, CHANDIGARH - 160002 THROUGH ITS FACTORY MANAGER. (Management)

AWARD

1. Uday Pal Singh, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the workman on the basis of offer *vide* letter dated 22.06.1998, joined to the post of Engineer Electrical on 22.08.1998. The workman was later on given ceremonial designation on his promotion as Executive Engineer. The workman was performing his duties to the full satisfaction of the management with unblemished record of service from 22.06.1998 till 20.05.2019, when suddenly with bias attitude of the Factory Manager, he was served with the charge sheet dated 22.05.2019 and again supplementary charge sheet dated 03.06.2019. When the workman demanded documents to submit his reply to both the charges, instead of supplying the documents, the Factory Manager with pre-determined mind, without waiting for the reply of the workman, appointed one Shri Kumar Nikshep - Advocate as an Inquiry Officer. The workman participated in the inquiry and attended all the proceedings along with his Advocate. During the inquiry proceedings the workman also demanded documents and even made written requests for supply of the most relevant documents, to the Managing Director. There

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was no communication from management No.1 regarding the supply of the documents. The management in order to prove the charges as mentioned in the charge sheets, examined three witness during inquiry but none of them deposed that the workman was guilty of the charges. The management during the inquiry proceedings submitted a list of six persons as witnesses of the management but choose to examine only three witnesses to prove the charges. During the inquiry proceedings from the evidence recorded and the documents produced by the management, although there was no such evidence of the management from which any charge can be proved against the workman but the Inquiry Officer with a perverse report under pressure from the management goes on to prove the charges against the workman in his inquiry report which was supplied to the workman. The workman offered comments to the inquiry report. The management without going through the comments of the workman and without applying its mind to the assertions of the workman, abruptly terminated the services of the workman w.e.f. 05.10.2019 under Clause No.IV(9) of the appointment letter dated 22.06.1998. This action of the management is arbitrary, unconstitutional full of biasness, illegal and uncalled for and against the provisions of the ID Act and also contrary to Clause III of the appointment letter dated 22.06.1998. The termination of the workman is illegal and against the provisions of the ID Act in as much as the workman was not offered any retrenchment compensation for his unblemished service of approximately 21 years, notice pay as per the terms of the appointment letter dated 22.06.1998 i.e. three months' notice or pay in lieu of notice. The management in gross violation of the law of the land not paid even leave encashment, gratuity, annual bonus for the financial year 2018-19 and 2019-20, Group Saving Link Insurance and other dues till date to the workman. The management has not complied with the mandatory provisions of Section 25-F of the ID Act. Therefore, as per Clause IV(9) of the appointment letter, the termination ordered by the management may be declared as *void ab-initio*. The termination of the workman is illegal and mandatory provisions of Section 25-F of the ID Act was not complied with by the management as no personal hearing was given to the workman before terminating of his services. The charge sheets were issued to the workman with predetermined mind and even before filing of the reply, the Inquiry Officer was appointed. From the inquiry proceedings it can be inferred that the charges as levelled in the charge sheet were not proved against the workman and the report of the Inquiry Officer was full of contradiction and perverse one which cannot be made the basis of the termination of the services of the workman vide order dated 05.10.2019. The action of the management in terminating the services of the workman on 05.10.2019 is illegal, unlawful, unconstitutional and arbitrary and against the mandatory provisions of the ID Act. The workman also submitted appeal dated 02.11.2019 against the order dated 05.10.2019 to the management No.1 but as usual there is no communication about the outcome of the appeal of the workman from management No.2. The management did not allow the workman to join duty. The workman served demand notice demanding reinstatement through the Learned Assistant Labour Commissioner, U.T. Chandigarh, who conducted conciliation proceedings but the same ended in failure. Hence, the present dispute. The workman is not gainfully employed since the date of his illegal termination i.e. 05.10.2019 and could not get any other alternative job despite his best efforts. Thus, prayer is made that the inquiry conducted against the workman may be declared as vitiated being conducted in violation to the principles of natural justice as the most relevant documents were not supplied to the workman during the inquiry and also with the report of the Inquiry Officer being perverse is not based on the evidence recorded during domestic inquiry. The stigmatic order of termination dated 05.10.2019 based on defective inquiry and perverse inquiry report may be quashed and the management may be directed to reinstate the workman with full back wages and all attendant benefits w.e.f. 06.10.2019.

2. On notice the management No. 1 & 2 appeared through its representative Shri D. P. Sharma and contested the claim statement by filing join written statement on 09.02.2021 wherein preliminary objections are raised on the ground that Uday Pal Singh, the person concerned was not holding position of a 'workman' as defined under Section 2(s) of the ID Act. The job description of Uday Pal Singh was also not of a 'workman'. Uday Pal is working as Executive Engineer and was drawing gross salary of ₹ 86,077/- per month. He is a diploma holder in electrical engineering from Government Polytechnic more than about 13 years of experience. Even before he joined the employment with the management, he was not working as a 'workman'. His employment was to be regulated in accordance with the contract of his employment i.e. the appointment letter dated 22.06.1998. Therefore, by no stretch of imagination, Uday Pal can be termed to be a

'workman' as defined under Section 2(s) of the ID Act. Therefore, the present demand notice as well as statement of claim / reference is liable to be dismissed on this ground alone. The person concerned is not a 'workman' as defined under Section 2(s) of the ID Act, hence this Hon'ble High Court has got no jurisdiction to deal, entertain and adjudicate the present reference. Therefore, the present demand notice as well as statement of claim / reference is liable to be dismissed on this ground alone. The services of the concerned person were to be governed in accordance with his contract of employment i.e. appointment letter dated 22.06.1998 duly accepted by the concerned person. The concerned person was appointed vide letter dated 22.06.1998 as Engineer Electrical and later on he was promoted to the position of Executive Engineer vide letter dated 11.06.2019. Under Clause No.IV(9) of his contract of employment, it is provided that his employment could be terminated in case, at any time, his integrity was found doubtful and / or the management lost confidence in him. Clause No.IV(9) of the appointment letter dated 22.06.1998 is reproduced :—

"Your employment can be terminated in case, at any time, your integrity is found doubtful and / or the management loses confidence in you."

Since the services of the concerned person were terminated as per the terms of his contract of employment, the concerned person cannot agitate his grievances under the ID Act. Therefore, the present demand notice as well as statement of claim / reference is liable to be dismissed on this ground also. The concerned person was charge sheeted vide charge sheet dated 24.05.2019 and 04.06.2019 for grave and serious imputation of misconduct namely *"Theft within the Factory or Stealing the Company's Property or Fraud or Dishonesty in connection with the Company's Articles / Property"*. The concerned person submitted his explanation to the said charge sheets which was found unsatisfactory and a domestic inquiry was ordered so that the concerned person gets full opportunity to defend himself in the domestic inquiry. Shri Kumar Nikshep - Advocate was appointed as the Inquiry Officer vide letter dated 12.06.2019. The Inquiry Officer gave due opportunity to defend himself in the inquiry. The concerned person was afforded the assistance of Shri Subash Chander Gupta - Advocate as his defence representative in his inquiry. The witnesses of the management were examined in the presence of the concerned person and his defence representative. The defence statement was also recorded in the presence of his defence representative. The Inquiry Officer found him guilty of the charges and on the basis of findings of the Inquiry Officer, his services were terminated by the termination order dated 05.10.2019. The present demand notice and statement of claim are liable to be rejected as the services of the concerned person have been terminated on account of proved serious misconduct after holding fair and proper inquiry wherein due opportunity was given to the concerned person to defend himself. The inquiry has been conducted in accordance with the principles of natural justice. The nature of charge sheet found established against him i.e. *"Theft within the Factory or Stealing the Company's Property or Fraud or Dishonesty in connection with the Company's Articles / Property"*, which stands proved against the concerned person amounts to moral turpitude owing to which the management lost trust and confidence in him as the officer of the company, and as such, the termination order does not warrant any interference. As per the settled position of law where the services of an employee are terminated by his employer on account of loss of trust and confidence, the relief of reinstatement cannot be sought or granted. The statement of claim is illegal and defective as its contents are not verified by the applicant. So, the entire statement of claim is not only unworthy of any consideration but also the same does not call for any evaluation by the Hon'ble Court.

3. Further on merits, it is admitted to the extent that the applicant had joined the services of company on 22.06.1998 as Engineer Electrical. His appointment was subject to terms & conditions of his contract of employment i.e. letter of appointment dated 22.06.1998. Later on he was promoted to the position of Executive Engineer w.e.f. 01.07.2009 vide letter dated 11.06.2009. He was charge sheeted vide charge sheet dated 24.05.2019 and 04.06.2019 for grave and serious imputation of misconduct namely *"Theft within the Factory or Stealing the Company's Property or Fraud or Dishonesty in connection with the Company's Articles / Property"*. The concerned person submitted his explanation to the said charge sheets which was found unsatisfactory and a domestic inquiry was ordered so that the concerned person gets full opportunity to defend himself in the domestic inquiry. Shri Kumar Nikshep - Advocate was appointed as the Inquiry Officer vide

letter dated 12.06.2019. The Inquiry Officer gave due opportunity to defend himself in the inquiry. The concerned person was afforded the assistance of Shri Subash Chander Gupta - Advocate as his defence representative in his inquiry. The witnesses of the management were examined in the presence of the concerned person and his defence representative. The defence statement was also recorded in the presence of his defence representative. The Inquiry Officer found him guilty of the charges and on the basis of findings of the Inquiry Officer, his services were terminated by the termination order dated 05.10.2019. It is admitted as correct that the concerned person participated in the inquiry and attended all the proceedings along with his Advocate. As regards the request for supply of documents is concerned, the Factory Manager *vide* his letter dated 05.08.2019 gave point-wise reply to the request of the concerned person. Since, the reply dated 05.08.2019 of the Factory Manager was explicit with respect to supply of documents to the concerned person, there was no further necessity to issue any communication for the same purpose from the office of Managing Director. The inquiry against the concerned person has been conducted in accordance with the principles of natural justice. It was the management who was to decide as to how many witnesses were to be examined out of the total list. The findings of the Inquiry Officer are based on the evidence led by both the parties. It is denied as wrong and false that the inquiry report is perverse rather it is based on the evidence led by both the parties. The concerned person has been found guilty of the charges by the Inquiry Officer and thereafter the services of the concerned person were terminated. The written comments submitted by the concerned person were duly considered while passing the order of termination. The action on the part of the management is not arbitrary, unconstitutional and it is not full of biasness as alleged. The services of the concerned person are terminated on the basis of findings of the Inquiry Officer and in consonance with the terms of the contract of employment. The concerned person is not a 'workman' and he is not entitled to the benefits of ID Act. The dues payable to the concerned person have been withheld due to the nature of charges stand proved against him as the same also amounts to moral turpitude. Before the punishment of termination order was issued, the person concerned was supplied a copy of inquiry report for his comments. He duly submitted his comments to the report of the Inquiry Officer *vide* his letter dated 03.10.2019. While passing the order of termination, the comments so submitted by him were also considered by the Factory Manager. Therefore, there was no requirement or necessity of giving him personal hearing before his termination. The termination order is absolutely legal, lawful, justified and the same does not warrant any interference in view of the peculiar circumstances of the case. Letter dated 02.11.2019 was never served on the management as alleged. Even otherwise, it was not necessary to reply the said letter of the concerned person as he stood terminated on 05.10.2019. The facts pertaining to serving of demand notice, conciliation proceedings needs no reply being matter of record. The person concerned is well qualified and is having sufficient experience. Therefore, it cannot be believed that he is not gainfully employment anywhere despite his best efforts. The bare statement is not adequate enough to seek any relief on this account from the Hon'ble Court. Further similar stand is taken as taken in the preliminary objections. Rest of the contents of the claim statement are denied as wrong and prayer is made that in view of the submission made in the preliminary objections and also on merits, the demand notice, statement of claim / reference may be dismissed with exemplary cost.

4. The workman filed replication to the joint written statement of management No.1 & 2, wherein the contents of the written statement except admitted facts of the claim statement are denied as wrong and averments of claim statement are reiterated.

5. From the pleadings of the parties, following issues were framed *vide* order dated 22.09.2021 :—

1. Whether the services of the workman were terminated illegally terminated by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether Shri Uday Pal Singh is not a 'workman' as defined under Section 2(s) of the ID Act ? OPM
3. Relief.

6. In evidence, the workman Uday Pal Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with copies of documents i.e. appointment letter dated 22.06.1998 issued by the management to him vide Exhibit 'W1'; termination order dated 05.10.2019 issued by Factory Manager for the management company vide Exhibit 'W2'; appeal dated 02.11.2019 against the termination order dated 05.10.2019 sent by the workman under registered cover to the Managing Director, GBA, Chandigarh vide Mark 'A'. On dated 15.11.2022 Learned Representative for the workman closed evidence on behalf of the workman.

7. On the other hand, the management examined Inquiry Officer Shri Kumar Nikshep - Advocate as MW1, who tendered his affidavit Exhibit 'MW1/A' along with inquiry file Exhibit 'M2'. It is pertinent to mention here that during the cross-examination of AW1 documents Exhibit 'M1' to Exhibit 'M17' was put to him.

Exhibit 'M1' is copy of suspension letter dated 20.05.2019.

Exhibit 'M2' is copy of inquiry file containing pages No.1 to 109. (at the time of recording evidence original inquiry file was produced which was seen and returned)

Exhibit 'M3' is copy of inquiry report vide letter dated 26.09.2019.

Exhibit 'M4' is reply dated 03.10.2019 to the inquiry report.

Exhibit 'M5' is copy of termination order dated 05.10.2019.

Exhibit 'M6' is copy of letter dated 19.06.2018 vide which the salary of the workman was revised to ₹ 86,077/- from ₹ 81,984/-.

Exhibit 'M7' is copy of letter dated 11.06.2009 vide which the workman was promoted to the post of Executive Engineer.

Exhibit 'M8' is the copy of job responsibility of the post of Electrical Engineer, which was received and accepted by the workman.

Exhibit 'M9' is the copy of the leave card year 2017 relating to Subhash Chand, worker bearing signatures of the workman against dated 13.06.2017, 25.07.2017, 26.09.2017, 04.10.2017, 17.11.2017 and 18.11.2017. (Original of Exhibit 'M9' was produced at the time of recording of evidence, which was seen and returned)

Exhibit 'M10' is copy of leave card year 2019 relating to Subhash Chand, worker bearing signatures of the workman against dated 24.01.2019, 21.02.2019, 27.02.2019, 26.03.2019 and 04.04.2019. (Original of Exhibit 'M10' was produced at the time of recording of evidence, which was seen and returned)

Exhibit 'M11' is the progress report for the period 23.01.1999 to 22.04.1999 of Jasbir Singh, wherein the workman being Head of the Department recorded remarks 'laborious and hardworking'.

Exhibit 'M12' is the progress report for the period 01.07.2007 to 30.09.2007 of Subhash Chand wherein the workman being Head of the Department recorded remarks 'above average'.

Exhibit 'M13' is the progress report for the period 13.07.2010 to 30.09.2010 and **Exhibit 'M14'** is the progress report for the period 01.04.2011 to 12.07.2011 of Akhilesh Kumar Sharma wherein the workman being Head of the Department recorded remarks 'above average'.

Exhibit 'M15' is copy of duly filled in personal *bio-data* of workman having affixed his photograph thereon signed by him.

Exhibit 'M16' is copy of appointment letter dated 22.06.1998.

Exhibit 'M17' is copy of reply dated 18.02.2020 filed by the management to the demand notice dated 18.11.2019 raised by the workman before the Assistant Labour Commissioner, U.T. Chandigarh.

On 27.01.2023 Learned Representative for the management closed evidence on behalf of the management.

8. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :—

Issues Nos.:- 1 & 2 :

9. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

10. Onus to prove issue No.1 is on the workman and onus to prove issue No.2 is on the management.

11. Under these issues the workman Uday Pal Singh examined himself as AW1 and *vide* his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto and supported his oral version with documents Exhibit 'W1', Exhibit 'W2' and Mark 'A'.

12. On the other hand, management examined MW1 Shri Kumar Nikshep - Advocate, Inquiry Officer, who tendered his affidavit Exhibit 'MW1/A' along with inquiry file already exhibited *vide* Exhibit 'M2'.

13. From the oral as well as documentary evidence led by the parties it comes out that undisputedly Uday Pal Singh was appointed as Engineer Electrical in the organisation of the management w.e.f. 22.06.1998 *vide* appointment letter dated 22.06.1998 / Exhibit 'W1' and was promoted to the post of Executive Engineer *vide* letter dated 11.06.2009 / Exhibit 'M7'. It is also admitted fact of the parties that the job responsibility of the post Electrical Engineer was received and accepted by Uday Pal Singh on 08.10.1998 *vide* Exhibit 'M8'. In this regard, AW1 Uday Pal Singh in his cross-examination admitted as correct that he was appointed *vide* letter dated 22.06.1998, copy of which is Exhibit 'M16' (already exhibited *vide* Exhibit 'W1'). AW1 in his cross-examination further admitted as correct that he joined company on 22.06.1998 as Engineer Electrical. AW1 admitted as correct that he was promoted to the post of Executive Engineer *vide* letter dated 11.06.2009 Exhibit 'M7'. AW1 further stated that he has seen the copy of job responsibility of the post of Electrical Engineer which is received and accepted by him on 08.10.1998 i.e. Exhibit 'M8'. Further there is no dispute with regard to the fact that the name of the Electrical Department was later on changed to Facility Management. In this regard AW1 in his cross-examination stated that the name of his department was earlier Electrical Department and later on its name was changed to Facility Management.

14. Admittedly, the last drawn salary of the workman was ₹ 86,077/-. In this regard AW1 in his cross-examination admitted as correct that his last drawn monthly salary is ₹ 86,077/-, which was revised *vide* letter dated 19.06.2018 Exhibit 'M6'.

15. As far as the procedure adopted by the Inquiry Officer to conduct the proceedings of domestic inquiry qua the workman Uday Pal Singh are concerned, the management is proved to have adopted the due procedure. In this regard, AW1 in his cross-examination admitted as correct that he was suspended *vide* letter dated 20.05.2019 Exhibit 'M1'. AW1 admitted as correct that a domestic inquiry in his case was conducted by Inquiry Officer Shri Kumar Nikshep, Advocate. A copy of the inquiry file containing pages 1 to 109 is Exhibit 'M2'. He was charge sheeted *vide* charge sheet dated 24.05.2019 (internal page No. 58 to 59 of inquiry file) and also by supplementary charge sheet dated 04.06.2019 (internal page No. 61 to 62 of inquiry file). AW1 admitted as correct that he participated in the inquiry proceedings along with Shri S.C. Gupta,

Advocate from time to time. AW1 admitted as correct that the management witnesses were examined in the presence of his advocate and he also got recorded his defence statement in his presence. AW1 admitted as correct that the management supplied copies of all the relied upon documents and list of management witnesses to him and he got recorded his statement to this effect on dated 29.06.2019 with the inquiry officer. AW1 admitted as correct that first witness was examined on 11.07.2019 by the management. AW1 admitted as correct that the inquiry officer held him guilty of the charges. AW1 admitted as correct that he was supplied with copy of the inquiry report *vide* letter dated 26.09.2019 Exhibit 'M3'. AW1 admitted as correct that he filed reply dated 03.10.2019 / Exhibit 'M4' to the inquiry report. AW1 admitted as correct that thereafter he was terminated *vide* termination order dated 05.10.2019 Exhibit 'M5' (already exhibited *vide* Exhibit 'W2').

16. Learned Representative for the workman contended that in the inquiry proceedings the management cited six witnesses of management but examined only three witnesses out of them. The material witness Pati Raj has not been examined by the management in the inquiry proceedings. The management without exhausting the list of witnesses, in a pre-decided manner proved the charges against the workman. To support his arguments Learned Representative for the workman referred the cross-examination of AW1 wherein he has stated that the management did not exhaust the list of witnesses during inquiry proceedings. To my opinion, the aforesaid contention raised by Learned Representative for the workman does not carry any force because the workman has failed to show as to what prejudice is caused to him if the management has examined only three witnesses out of the six witnesses named in the list of witnesses of the management. Besides, it is the discretion of the management as to how many witnesses it intends to examine into inquiry. Above all the workman may examine any of the un-examined witnesses of the management or any other material witness in his defence evidence before the Inquiry Officer but the workman had failed to do so. In this regard it is relevant to go through the statement of Uday Pal Singh examined as DW1 in the inquiry proceedings. The cross-examination of DW1 Uday Pal Singh was recorded in the inquiry proceedings on 05.09.2014 which is internal page 36 to 41 of the inquiry file Exhibit 'M1'. At page 41 of the inquiry file, in cross-examination Presenting Officer had put a question to Uday Pal Singh that 'Is it correct that neither you have named Pati Raj in list of witnesses nor called him as a witness in your evidence ?' In reply to the aforesaid question Uday Pal Singh, being DW1 answered 'It is correct'. Even during the proceedings of the present case the workman could examine any witness including Pati Raj. But the workman has failed to do so. Moreover, the inquiry report is based on the oral and documentary evidence which has come on record during the domestic inquiry proceedings. No reliance has been placed upon the witnesses who were not examined. Whatever witness is examined by the management, full opportunity was granted to the workman to conduct his cross-examination in the presence of his defence representative and the workman availed the said opportunity.

17. Learned Representative for the workman further contended that the inquiry proceedings stands vitiated due to non-supply of the documents sought by the workman *vide* his application dated 31.07.2019. To my opinion, even the aforesaid contention raised by the Learned Representative for the workman is devoid of merits because the management in the present case has examined Inquiry Officer Shri Kumar Nikshep - Advocate as MW1, who in his cross-examination admitted as correct that during inquiry proceedings on 06.08.2019 the claimant placed on record an application dated 31.07.2019 seeking production of documents. MW1 in his cross-examination explained that the application dated 31.07.2019 was not addressed to him but to the disciplinary authority and the copy of the same was given to him. He did not supply copy of documents sought by the claimant in application dated 31.07.2019. MW1 voluntarily stated that the Disciplinary Authority filed reply dated 05.08.2019 to said application which is Mark 'J'. In view of reply Mark 'J' he disposed off application dated 31.07.2019, on 06.08.2019 to which claimant did not raise any objection. The aforesaid version of MW1 accompanied with the fact that in the present case, the workman did not move any application seeking production of documents from the management, no prejudice is caused to the workman due to non-supply of the documents mentioned in application dated 31.07.2019.

18. Learned Representative for the management contended that the claimant was discharging functions / duty in administrative and supervisory capacity. Thus, the workman did not fall within the definition of the 'workman' as defined in Section 2(s) of the ID Act. The management has taken the objection that the claimant Uday Pal Singh was performing supervisory duties as he was not only the leave sanctioning authority but also reporting authority of the workers, subordinate to him. The claimant had been recording the remarks in the progress reports of the workers. On the other hand, Learned Representative for the workman denied the fact that the claimant was performing supervisory duties and taken the plea that the workman was in all these years performing the duties which was not at all supervisory in nature as none has ever worked under him and also the workman was not exercising any controlling as well as disciplinary powers at any point of time. The duties which the workman was perform were manual duties i.e. (i) laying of cables and termination, PVC pipes, wires; (ii) repair and installation of ceiling fans, exhaust fans, wall fans, electrical motors; (iii) repair, maintenance and operation of power distribution panels, lighting distribution panels; (iv) repair of microscopes, extension leads, machine lamps, tube sets, straightening devices; (v) repair and maintenance of control panels of machines; (vi) changes of electrical defective switches, MCB, MCCB, ELCB; (vii) repair, maintenance and operations of Endo Gas Plant, Air-conditions Plants, Diesel Engine Generators etc.; (viii) repair related to electrical works at company's residencies allotted to Expats; (ix) repair, maintenance and operation of low tension, high tension power distribution system in sub-station; (x) repair and maintenance of lifts, power UPS along with the service providers; (xi) working on weekly holidays and festival holidays to cover up the repair and maintenance job of electrical along with the contractors' workers. It is further argued by Learned Representative for the workman that the workman was never authorised by any circular or letter issued by the respondents that he will be discharging any supervisory duties. The workman was working as Team Leader and in routine he was forwarding the reports of its team to the respondents. The designation of Executive Engineer was given to the workman which was ceremonial in nature and no circular or specific instructions were issued by the respondents to authorise the workman to do any supervisory, managerial or administrative duties to take the disciplinary action against any of the employee subordinate to him or to appoint or terminate the services of any body. Therefore, the workman is duly covered under the definition of Section 2(s) of the ID Act.

19. To my opinion, the plea taken by the workman that he was performing manual duties does not stand proved. The alleged manual duties referred above serial No. (i) to (xi) by Learned Representative for the workman does not form part of the job responsibilities of Electrical Engineer Shri Uday Pal Singh / Exhibit 'M8'. There is no evidence on record to substantiate the workman's plea that he was performing manual duties. On the other hand, the contention raised by Learned Representative for the management that the workman was discharging duties in managerial and supervisory capacity stands proved from the cross-examination of AW1 Uday Pal Singh wherein he has admitted as correct that the workers of his department, whenever applied for leave, used to fill in the prescribed leave card and then after obtaining his signatures, they were permitted to proceed on leave. AW1 voluntarily stated that his signatures were obtained sometimes on leave card. Subhash Chand worker was working in his department. He has seen original leave card year 2017 relating to Subhash Chand worker which bears his signatures against dated 13.06.2017, 25.07.2017, 26.09.2017, 04.10.2017, 17.11.2017 and 18.11.2017 copy of same is Exhibit 'M9'. He has seen original leave card year 2019 relating to Subhash Chand worker which bears his signatures against dated 24.01.2019, 21.02.2019, 27.02.2019, 26.03.2019 and 04.04.2019 copy of same is Exhibit 'M10'. AW1 voluntarily stated that as per the leave system prevalent in the management, no leave was considered as sanctioned until signed by the H.R. or Personnel Department. The aforesaid volunteer statement of AW1 stands falsified from his cross-examination wherein he has admitted as correct that Exhibit 'M9' and Exhibit 'M10' bears his signatures under the column "Department Head". AW1 denied the suggestion as wrong that after signatures of department head, the leave card was sent to H.R. or Personnel Department for the purpose of making entry in the leave record. AW1 further stated that previously Jasbir Singh, Subhash Chand, Akhilesh Kumar Sharma were working in his department. AW1 admitted as correct that he used to recommend the progress report of the above named worker Jasbir Singh etc. AW1 admitted as correct that in the progress report for the period 23.01.1999 to 22.04.1999 of Jasbir Singh he being Head of the Department recorded remarks 'laborious and hardworking', copy of same is Exhibit 'M11'. AW1 admitted as correct that in the progress report for the period 01.07.2007 to 30.09.2007 of Subhash

Chand he being Head of the Department recorded remarks 'Above Average', copy of same is Exhibit 'M12'. AW1 admitted as correct that in the progress reports for the period 13.07.2010 to 30.09.2010 and 01.04.2011 to 12.07.2011 of Akhilesh Kumar Sharma he being Head of the Department recorded remarks 'Above Average', copies of same are Exhibit 'M13' and Exhibit 'M14' respectively. AW1 denied the suggestion as incorrect that on his recommendation the probation period of above said workers Jasbir Singh etc., was either extended or confirmed. AW1 denied the suggestion as wrong that he has wrongly denied the suggestion that on my recommendation the probation period was either extended or confirmed. AW1 admitted as correct that he filed his personal bio-data when he joined the company. Copy of his duly filled in personal bio-data having affixed his photograph thereon and duly signed by him is Exhibit 'M15'. AW1 admitted as correct that at Point 'A' to 'A1' of Exhibit 'M15' he has written that as Section Incharge of utility and electrical, responsible for over all function of elect./utility report to S. M. Engg. AW1 in his cross-examination has stated that he has been the copy of job responsibility of the post of Electrical Engineer which was received and accepted by him on 08.10.1998 i.e. Exhibit 'M8'. The contention of the management that the claimant was responsible for efficient functioning of the electrical department stands proved from Clause 1, 2, 11, 12, 15, 16, 17 and 19 of Exhibit 'M8' which reads as below :—

- "1. Will be responsible for efficient functioning of electrical deptt. by ensuring smooth and efficient functioning of all electrical installations, equipments and appliances in the factory premises.*
- 2. Will be responsible for over all safety of all electrical installations in the factory premises.*
- 11. planning, organising and executing project activity related to electrical areas in consultation with Asstt. Manager (Elect.).*
- 12. To look for new safe methods towards men and machines.*
- 15. Co-ordination with other departments and developing a sense of responsibility and team work among technicians and Shift Engineers.*
- 16. Man power management including shift planning of Shift Incharges and workmen in consultation with Asstt. Manager (Elect.).*
- 17. Will take care of proper training for Shift Incharges and workmen.*
- 19. Leave planning and sanctioning of leaves for workmen."*

From the cross-examination of AW1 referred above accompanied with his job responsibilities and monthly salary package, the respondents have fully established that Uday Pal Singh is not a 'workman' in terms of Section 2(s) of the ID Act. Uday Pal Singh is proved to have discharged his functions and duties in a supervisory capacity and not in the capacity of a 'workman'. Therefore, Uday Pal Singh falls under sub-Clause (iv) of Section 2(s) of the ID Act. In this regard the judgment of Hon'ble Supreme Court of India referred by Learned Representative for the management reported in **2002(1) SCT 958 SC tilted as Birla Corporation Limited Versus Rajeshwar Maheto** is applicable to the facts of the present case to an extent.

20. Learned Representative for the management argued that the termination of the workman is legal as per Clause IV(9) of the appointment letter dated 22.06.1998 / Exhibit 'W1'. It is further argued that the workman was charge sheeted vide charge sheet dated 24.05.2019 (internal page 58 of inquiry file Exhibit 'M1') for commission of theft within the factory and was further charge sheeted for theft within the factory or stealing the company's property or for commission of fraud or dishonesty in connection with company's articles / property vide supplementary charge sheet dated 04.06.2019 (internal page 61 - 62 of inquiry file Exhibit 'M1'). After taking reply to the charge sheet dated 24.05.2019 and supplementary charge sheet dated 04.06.2019 and

after holding domestic inquiry in accordance with the principle of natural justice, the workman was held guilty of the charges and order of termination dated 05.10.2019 was passed against the workman. Since the management has lost trust and confidence in the workman, thus the termination order is legal and as per the Clause IV(9) of the appointment letter / contract of employment i.e. Exhibit 'W1'. Clause IV(9) of the appointment letter Exhibit 'W1' / Exhibit 'M16' is reproduced as below :

"9. Your employment can be terminated in case, at any time, your integrity is found doubtful and / or the Management loses confidence in you."

In the present case, in view of the fact that the workman was charge sheeted and after holding domestic inquiry held guilty of the charge sheets dated 24.05.2019 and 04.06.2019 for the charge of theft within the factory or stealing of company's property or fraud or dishonesty in connection with company's property or articles, the workman Uday Pal Singh certainly lost the confidence of management, which attracts Clause IV(9) of the appointment letter Exhibit 'W1' / Exhibit 'M16', mentioned above. The case law referred by Learned Representative for management **reported in 1973 AIR (SC) 1227, titled as The Workmen of M/s Fire Stone Type and Rubber Co. Versus The Management and Others**, is applicable to the facts of the present case and to an extent. As many as 10 principles were held to be established. It would be pertinent to reproduce only some of them :—

- "(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal is order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying its action, and it is open to the employee to adduce evidence contra.*
- (6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.*
- (7) It has never been recognised that the Tribunal should straightway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective."*

In view of the aforesaid proposition of law, even if no inquiry has been held by an employer, the Tribunal in order to satisfy itself about the legality and validity of order, had to give an opportunity to the employer and the employee to adduce evidence before it. Therefore, it is clear that the employee dismissed after holding domestic inquiry even without inquiry but in later case the employer has to lead evidence first time before the Court to prove the charges against the employee. In the present case, both the parties led their evidence by availing full opportunity in the proceedings of the domestic inquiry as well as during proceedings before this Court. So, there has been no illegality in dismissing Uday Pal Singh on the ground of loss of confidence as per condition No.IV(9) of Exhibit 'W1' / Exhibit 'M16'.

21. The plea taken by the management that the termination of the workman was as per the contract of his employment, stands proved from the cross-examination of AW1 Uday Pal Singh, who admitted the suggestion as contract that his termination order was passed as per the contract of his employment. As already discussed above, the domestic inquiry was conducted in due compliance with the provisions of law and in accordance with the principles of natural justice. Learned Representative for the workman failed to point out any procedural defect in conducting the domestic inquiry. The workman was supplied with copy of the inquiry report, to which he filed his written comments Exhibit 'M4'. The sufficiency or insufficiency of evidence considered by the Inquiry Officer is not to be looked into and the findings of facts recorded by the Inquiry Officer are not to be re-appreciated by this Court as this Court will not sit as an appellate authority over

the Inquiry Officer. The case law referred by Learned Representative for the management reported in **2020(2) SCT 170 SC tilted as State of Karanataka and Another Versus N. Gangaraj and 2001(90) FLR 576 (AP) tilted as The General Manager, Ordinance Factory, Project Yeddumailaram & Another Versus The Central Administrative Tribunal, Hyderabad & Another** are applicable to the facts of the present case to an extent.

22. The workman has already attained the age of superannuation. In this regard AW1 Uday Pal Singh in his cross-examination admitted as correct that as per appointment letter Exhibit 'M16' / Exhibit 'W1', the age of retirement is 55 years and later on it was increased to 58 years. AW1 admitted as correct that he has already attained the age of superannuation i.e. 58 years on 04.02.2019.

23. Accordingly, issue No.1 is decided against the workman and in favour of the managements and issue No.2 is decided in favour of the managements and against the workman.

Relief :

24. In the view of foregoing findings on the issues above, the present industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 27th January, 2023.

(Sd.). . .,

(JAGDEEP KAUR VIRK)
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory Chandigarh.
UID No.PB0152

Secretary Labour
Chandigarh Administration.

CHANGE OF NAME

I, Bishan Dev, S/o Mohan Ram, R/o 2045, Sector 15-C, Chandigarh, have changed my name to Bishan Ram.

[410-1]

I, Parkash Chand, S/o Mool Chand, House 167, Phase-2 Ramdarbar, Chandigarh, have changed my name from Parkash Chand to Om Prakash.

[411-1]

I, Vandana Chopra, W/o Rajesh Dhawan, R/o # 2228, Sector 40-C, Chandigarh, have changed my name from Vandana Chopra to Monica Dhawan.

[412-1]

I, Ankit Grover, S/o Rajiv Grover, R/o # 1101/1, Sector 29-B, Chandigarh, have changed my name Ankit Grover to Akhil Grover.

[413-1]

I, Rohtas, S/o Balwant Ram, # 346, Dadu Majra Colony, Chandigarh, have changed my name to Rohtash.

[414-1]

मैं, मुन्ना सिंह, पुत्र श्री राम दयाल, निवासी मकान नंबर 859, गांव कजहेडी, सेक्टर 52, यू.टी., चंडीगढ़ ने अपना नाम मुन्ना सिंह से बदलकर मुन्ना राजपूत कर दिया है।

[415-1]

I, Sukhvir Singh, S/o Nachhater Singh, R/o # 917, Deep Complex Hallomajra, Chandigarh, have changed my name to Sukhvir Singh Saini.

[416-1]

I, Satyarth Parkash, S/o Sh. Prem Parkash, R/o H. No. 596, Sector 32-A, Chandigarh, declare that I have changed my name from Satyarth Parkash to Satyarth Prakash.

[417-1]

मैं, रेशम देवी, पत्नी स्व. सुरेश चन्द, निवासी मकान नं. 2771/2, सेक्टर 47-सी, चंडीगढ़, बयान करती हूँ कि रेशमी देवी, रेशमा देवी, रेशम देवी नाम एक ही व्यक्ति के अर्थात् मेरे ही हैं। संबंधित नोट करें।

[418-1]

I, Buntly Harijan, S/o Kailash, # 2426, Mauli Jagran Colony, Chandigarh, have changed my name to Buntly.

[419-1]

I, Dhanwant Singh Guram, S/o Sardar Tirath Singh, R/o H. No. 20-B, Sector 4-A, Chandigarh, having permanent Account Number AFSPG1801G, Adhaar Card Number 7973 2990 8438, declare that I am also using my name under initials as D S Guram, henceforth the names D S Guram and Dhanwant Singh Guram used and belongs to one and the same person. Be it known for all intents and purposes.

[420-1]

I, Kishor Yadav, S/o Kailash Chaudhry, # 695, Housing Complex, Dhanas, Chandigarh, have changed my name to Raj Kishore.

[421-1]

I, Parul, D/o Roshan Lal, H. No. 128/22, I.T.B.P. Campus, Sector 32-A, Chandigarh, have changed my name to Parul Mehra.

[422-1]

I, Raman Kumar, S/o Parkash Chand, R/o # 573, Sector 41-A, Chandigarh, declare that I have changed my name from Raman Kumar to Ravi Kumar.

[423-1]

I, Meena Devi, W/o Dinesh Chander, # 1182, Sector 10-D, Chandigarh. Declare that in my son Vivek Raturi Matri DMC my Name written as Meena W/o Dinesh which is to be changed to Meena Devi W/o Dinesh Chander.

[424-1]

I, Prabjot Kaur, W/o Sh. Gagandeep Singh, R/o House No. 201, Village Kishangarh, Chandigarh, have changed my name Jyoti to Prabjot Kaur.

[425-1]

I, Rashmi Sood, D/o Yagdev Singh Malhotra and W/o Kuldeep Rai Sood, R/o 5068/3, Category-3, MHC Manimajra, Chandigarh, have changed my name to Pashi Sood.

[426-1]

I, Nanak Yadav, S/o Devta Ram Yadav, # 288/C, Small Flats, Dhanas, Chandigarh, have changed the name of minor daughter from Crystal Yadav to Siya Yadav.

[427-1]

I, Ramesh, S/o Pappu, # 722/11, Bapu Dham Colony, Sector 26, Chandigarh, have chaged my name to Rakesh.

[428-1]

I, Monika, W/o Vijay Kumar Upadhyay, R/o # 1642, Phase-2, Ram Darbar, Chandigarh, have changed my name from Monika to Monika Upadhyay.

[429-1]

I, Pooja, W/o Vinod Kumar, R/o 203, Ph. 2, Ramdarbar, Chandigarh, have changed my minor son's name from Lal Bahadur Chauhan to Vansh.

[430-1]

I, Sumana Devi, W/o Subhash Chand Sharma, R/o # 1966 Income Tax Colony, Sector 43-B, Chandigarh, have changed my name from Sumana Devi to Suman Sharma vide affidavit dated 25/4/23 sworn before Chandigarh Notary.

[431-1]

I, Sanjeev, S/o Dhan Bhadur, # 630, Phase-1, Ramdarbar, Chandigarh, have changed my minor son name from Akshit Vohra to Akshit.

[432-1]

I, Sameena Khatum, D/o Iqrar Ahmed and W/o Nadeem Ahmed, R/o # 126, HBC, Dhanas, Chandigarh, declare that I have changed my name from Sameena Khatum to Sameena.

[433-1]

I, Vijay Kumar, S/o Swami Nath, R/o # 1642, Phase-2, Ram Darbar, Chandigarh, have changed my name from Vijay Kumar to Vijay Kumar Upadhyay.

[434-1]

I, Parmod Kumar, S/o Bhag Ram, # 2441, Mari Wala Town, Manimajra, Chandigarh, have changed the name of my minor son from Pankaj to Pankaj Soni.

[435-1]

I, Parmod Kumar, S/o Bhag Ram, # 2441, Mari Wala Town, Manimajra, Chandigarh, have changed the name of my minor daughter from Tamanna to Tamanna Soni.

[436-1]

I, Poonam, W/o Parmod Kumar, # 2441, Mari Wala Town, Manimajra, Chandigarh, have changed my name to Poonam Soni.

[437-1]

I, Owais Iqbal, S/o Nazir Ahmed, R/o 5187-A, Sector 38 West, Chandigarh is hereby declare that in some of my documents I.E.R.C.etc., my name is mentioned as Peerzada Owais Iqbal and my father name is Nair Chand Naqash. But in future my name may be known as Owais Iqbal and my Father's name is Nazir Ahmed for all purposes.

[438-1]

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